BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Portantino, et al.**	**AB 1662**

SUBJECT

Disaster Loss Deduction/Excess Loss Carryover/August 2009 Los Angeles & Monterey, Placer, and July 2010 Kern County Wildfires & January 2010 Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, & Siskiyou County Winter Storms

SUMMARY

This bill would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the wildfires that occurred in August 2009 in Placer, Los Angeles and Monterey counties, and in July 2010 in Kern county and the winter storms that occurred in January 2010 in Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou Counties.

This analysis will not address the bill's changes to the Property Tax Law, as they do not impact the department or state income tax revenue.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide immediate tax relief to individuals and businesses affected by the wildfires and winter storms.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment.

ANALYSIS

PROGRAM BACKGROUND

Governor Arnold Schwarzenegger proclaimed on August 28, 2009, a state of emergency declaring the wildfires that occurred in August 2009 in Los Angeles and Monterey Counties to be a state disaster. On August 30, 2009, and July 26, 2010, the Governor proclaimed a state of emergency declaring the wildfires that occurred in Placer County during August 2009 and in Kern County during July 2010, to be state disasters. President Obama did not declare either one of these fires to be a federal disaster.

On March 8, 2010, President Obama declared a federal disaster for the severe winter storms, flooding, and debris and mud flows in Calaveras, Imperial, Los Angeles, Riverside, San Bernardino, and Siskiyou Counties in January and February 2010. President Obama did not include San Francisco County in the declaration.

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FEDERAL/STATE LAW

Under federal and state law, a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area declared to be a disaster by the President of the United States.

Existing federal and state laws allow an individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, may deduct such losses to the extent that each loss exceeds $100 and aggregate net losses for the taxable year exceed 10 percent of adjusted gross income. Additionally, a taxpayer can elect to file an amended return to deduct a casualty loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to casualty losses occurring in a Presidentially-declared disaster area. This election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal disaster tax law treatment. The election is not available for a Governor-only declared disaster until enabling state legislation has been enacted.

State tax law[1] identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100 percent of the excess disaster loss may be carried over for up to fifteen taxable years. In addition, for disasters that were the subject of a Governor's proclamation but not the subject of a Presidential disaster declaration, enactment of state law identifying a specific event as a disaster for state tax law purposes authorizes the taxpayer to elect to deduct the disaster loss on the return for the prior taxable year.

THIS BILL

This bill would add the wildfires that occurred in Placer, Los Angeles and Monterey Counties in August 2009 and in Kern County in July 2010, and the winter storms that occurred in Calaveras, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Francisco, and Siskiyou Counties in January and February 2010 to the current list of specified disasters under the Personal Income Tax Law and the Corporation Tax Law.

As a Presidentially-declared disaster, existing law allows taxpayers affected by the January and February 2010 Calaveras, Imperial, Los Angeles, Riverside, San Bernardino, and Siskiyou Counties winter storms to elect to file an amended return for the prior taxable year to deduct the disaster loss and reduce the prior year tax liability, resulting in an expedited refund.

[1] AB 1452 (Stats. 2008, Ch. 763) disallows net operating loss deductions by suspending them for taxable years 2008 and 2009 for a taxpayer with net business income of $500,000 or more.

As a governor-proclaimed disaster, this bill would allow taxpayers affected by the wildfires that occurred in Placer, Los Angeles and Monterey Counties in August 2009 and in Kern County in July 2010 and the winter storms in San Francisco County in January 2010, the ability to elect to file an amended return for the prior taxable year to deduct the disaster loss and reduce the prior year tax liability, resulting in an expedited refund. This bill would also allow carry forward treatment for up to 15 taxable years for excess losses sustained as a result of the wildfires and winter storms.

LEGISLATIVE HISTORY

AB 50 (Nava, 2009/2010) would allow taxpayers disaster loss treatment for losses sustained as a result of the wildfires that occurred in Placer County during August 2009. AB 50 failed passage out of the Senate.

AB 1690 (Chesbro, 2009/2010) would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the January 9, 2010, Humboldt County earthquake.
AB 1690 is currently enrolled.

AB 1782 (Harkey, 2009/2010) would provide automatic special tax treatment, called disaster loss treatment, for losses sustained as a result of any governor-declared state of emergency.
AB 1782 was held in the Assembly Revenue and Taxation Committee.

AB 2136 (V. Manuel Perez, et al., 2009/2010) would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the April 2010 Imperial County earthquake.
AB 2136 has been sent to enrollment.

ABX8 31 (Portantino/Jeffries, 2009/2010) would allow special tax treatment, called disaster loss treatment, for losses sustained as a result of the August 2009 Los Angeles County wildfires.
ABX8 31 failed to pass prior to the adjournment of the eighth special session of 2009/2010.

FISCAL IMPACT

This bill would not significantly impact the department’s costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of AB1662 Effective Immediately Upon Enactment Enactment Assumed by September 30, 2010		
2009-10	2010-11	2011-12
-$22,000	+$10,000	+$11,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Support/Opposition

Support

Los Angeles County Board of Supervisors, Regional Council of Rural Counties, California State Association of Counties, California Professional Firefighters

Oppose

None on file.

VOTES

Assembly Floor – Ayes: 77, Noes: 0
Senate Floor – Ayes: 28, Noes: 0
Concurrence – Ayes: 74, Noes: 0

LEGISLATIVE STAFF CONTACT

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